

to do so. Assuming the truth of the evidence of this witness, and there is not the slightest ground to doubt the entire accuracy of his statement, and the idea of an adverse enjoyment of the right of way for twenty years, upon which the presumption of the grant must be founded, is entirely dispelled.

The testimony of the other witnesses, who speak of the use of the road for twenty years and more by those who have held the farm owned by the complainant, does not at all conflict with the proof of Mr. Charles H. Pue. There is, and can be, no doubt that the road has been so used, and so far as the witnesses have deposed, who were examined on the part of the complainant, this user was not qualified by any circumstance which would interfere with the presumption of a grant which the complainant seeks to establish; and if the case rested upon their evidence alone, I do not very well see how the presumption could be resisted. But it certainly, by no means, follows, because these witnesses are aware of no fact or circumstance showing the use of the road to have proceeded from the leave or favor of the defendant, that therefore no such fact or circumstance exists, or that because they never heard the father of the complainant say that the defendant had the right to close up the road, if he thought fit to do so, that therefore, he made no such declaration. That he did make such a declaration there is, and can be, no reason to doubt. And the conviction of the court upon this subject, by no means involves the slightest imputation upon the veracity of the other witnesses, who simply speak of the use of the road, for such use is quite compatible with the declarations referred to.

Here, then, is a case in which the complainant's title to the interposition of this court, by injunction, rests upon the presumption of the grant of a right of way, and that presumption, according to the authorities, can only be made from a user for twenty years, exercised adversely and without anything to qualify it. Such a case is made by the bill, but this the answer denies, and this denial is supported by a witness whose situation gave him peculiar means of knowing the views of the parties, and who stands before the court above all suspicion.